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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JOHN ALAN CRAWFORD, Defendant and Appellant.	E047319 (Super.Ct.No. SWF023233) OPINION

APPEAL from the Superior Court of Riverside County. Duane M. Lloyd* and Mark A. Mandio, Judges. Affirmed as modified.

Patrick Morgan Ford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

* Retired judge of the San Bernardino Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Defendant and appellant John Alan Crawford pled guilty to five counts of forcible sexual penetration of a person under 14 years of age. (Pen. Code, § 289, subd. (a)(1).)[1] Defendant contends there was an insufficient factual basis for his plea. We affirm.

BACKGROUND

At the preliminary hearing, a police officer testified as to his conversation with defendant, as well as his observation of an interview of the victim. Defendant told the police that he molested an eight-year-old girl four times while living with her parents from May to September 2007. Defendant told the police "that he put his hands over the top of her clothes and touched her breasts area . . . stomach area, vagina area and then later his hands went underneath the clothes to the same areas." He also told the police that his tongue touched the same places, and he was sexually aroused. He denied any penetration. The victim said that defendant touched her "body parts" with his hands, mouth, and penis. She also said that defendant put his penis and finger in her vagina, and that it hurt. The victim could not remember how many times it happened, but that it happened "[o]nce during the week and once on the weekend," and it had been ongoing since she was six.

Defendant was charged with two counts of sexual intercourse with a child 10 years of age or younger (§ 288.7, subd. (a)), and two counts of sexual penetration of a child 10 years of age or younger (§ 288.7, subd. (b)). Defendant negotiated a plea

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[1] All further statutory references are to the Penal Code.

and pled guilty to five counts of forcible sexual penetration (§ 289, subd. (a)(1)), to be served consecutively at the upper term, for a total term of 40 years.

Defendant's plea form states "I agree that I did the things that are stated in the charges I am admitting." Defendant was read the new amended charges, admitted the "acts complained [of] by the People" were true, admitted the acts were committed between the alleged dates and time, and pled guilty to each of the five counts. Counsel stipulated the trial court could review the transcript of the preliminary hearing solely for the limited purpose of looking for a factual basis.

STANDARD OF REVIEW

"[A] trial court possesses wide discretion in determining whether a sufficient factual basis exists for a guilty plea. The trial court's acceptance of the guilty plea, after pursuing an inquiry to satisfy itself that there is a factual basis for the plea, will be reversed only for abuse of discretion. [Citation.]" (*People v. Holmes* (2004) 32 Cal.4th 432, 443.)

DISCUSSION

Defendant contends that a factual basis for five counts of forcible sexual penetration was not established because the preliminary hearing transcript, according to defendant, does not support five counts of forcible penetration.

"The factual basis required by section 1192.5 does not require more than establishing a prima facie factual basis for the charges. [Citation.]" (*People v. Holmes*, *supra*, 32 Cal.4th at p. 442). "[T]here need not be evidence of each element of the offense charged. Nor does the factual basis requirement obligate the court to

resolve all contradictory evidence or be convinced beyond a reasonable doubt the defendant is guilty. [Citation.] The purpose of the inquiry is to corroborate what the defendant already admits. [Citation.]" (*People v. Wilkerson* (1992) 6 Cal.App.4th 1571, 1578.) Section 289 is violated each time a "new and separate 'penetration, however slight' occurs." (*People v. Harrison* (1989) 48 Cal.3d 321, 329.) Implied threats may create duress and " 'the total circumstances, including the age of the victim and his relationship to defendant are factors to be considered in appraising the existence of duress.' [Citation.]" (*Wilkerson, supra,* 6 Cal.App.4th at p. 1579.) Notwithstanding victim testimony that no force or threats were involved, it has been held that sufficient evidence of duress existed where the victim was eight years old at the time of the offenses, because at that age " 'adults are commonly viewed as authority figures' " and " '[t]he disparity in physical size between an eight-year-old and an adult also contributes to a youngster's sense of his relative physical vulnerability.' " (*Ibid.*)

Defendant admitted to the police molesting the victim "approximately four times." The victim reported two incidents, as well as incidents going back to when she was six, and two methods of penetration. Given that each penetration, however slight, is a violation of section 289, the trial court could reasonably infer that at least five penetrations occurred as the defendant admitted. Similarly, there is no abuse of discretion in the trial court inferring the eight-year-old victim was in duress.

COURT SECURITY FEES

Although not raised by the parties, we note that the reporter's transcript does not indicate oral pronouncement of the imposition of court security fees. While court security fees were included in the sentencing minutes and abstract of judgment, they were attributed to section 1465.9. There is no section 1465.9 in the Penal Code. Instead, the court security fee is mandated by section 1465.8.

"Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.) "The clerk cannot supplement the judgment the court actually pronounced by adding a provision to the minute order and the abstract of judgment." (*Id.* at pp. 387-388.) Section 1465.8, subdivision (a)(1), is mandatory and provides, in relevant part, that "a fee of twenty dollars ($20) *shall* be imposed on every conviction for a criminal offense . . . ." (Italics added.) Where no court security fee is imposed at all, the judgment should be modified on appeal to included the fee. (*People v. Crabtree* (2009) 169 Cal.App.4th 1293, 1328.)

Accordingly, we modify the judgment to include five $20 court security fees, and order the trial court to amend its sentencing minute order and abstract of judgment to refer to section 1465.8.

DISPOSITION

The judgment is modified to include five $20 court security fees. The superior court clerk is directed to amend its sentencing minute order and the abstract of judgment to attribute court security fees to section 1465.8, subdivision (a)(1), and to

forward a corrected copy of the amended abstract to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

MILLER
J.